

ADVISORY OPINION 95-015

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

September 7, 1995

Hon. Spencer D. Noe
The Republican Party of Kentucky
Capitol Avenue at Third Street
P.O. Box 1068
Frankfort, Kentucky 40601

Dear Mr. Noe:

This is in response to your August 8, 1995, request for an advisory opinion addressing the question of whether an expenditure by a political party to defeat, or diminish support for, the slate of candidates for Governor and Lieutenant Governor of another political party, would be a "contribution," as defined by KRS Chapter 121A, which must therefore be reported by that party's slate as an "expenditure" included in the maximum of \$1.8 million in expenditures, if the slate of the party making the expenditure accepts transfers from the public fund.

You also cite Federal Election Comm. v. Colorado Republican Federal Campaign Committee, 1995 WL 371934, 10th Cir. June 23, 1995, as persuasive authority for the position that advertising by a political party directed toward the defeat of the candidate of the opposing party is a contribution to the candidate of the party which paid for the advertisement.

We find that paid advertising, in any medium of expression, which is paid for by a political party whose nominees for Governor and Lieutenant Governor have chosen to accept transfers from the public fund, and which is directed toward the defeat of, or diminishing support for, the slate of an opposing party, constitutes a "contribution," as defined by KRS 121A.010(11)(a), and constitutes an "expenditure" by the slate of the party making the expenditure, within the meaning of KRS 121A.030(1) and (3).

Kentucky statutes have long recognized that contributions and expenditures include not only expenditures supporting a candidate, but also expenditures to defeat a candidate. For example, KRS 121.190(1) encompasses expenditures "with reference to or intended for, the support or defeat of a candidate [or] slate of candidates. ..." Similarly, KRS 121.150(1) provides that "no expenditure of money or other thing of value shall be made or incurred, directly or indirectly, ... to support or defeat a candidate [or] slate of candidates ... except through the duly appointed ... campaign treasurer. ..." Advertising by a political party having the effect of diminishing the support for the party's opponents also has the effect of promoting the nominees of the party paying for the advertisement.

KRS 121A.030(3) provides that expenditures with reference to a slate which has accepted public funds count toward the \$1.8 million cap unless they "qualify as an 'independent expenditure' as

defined in KRS 121.150(1)." In the question you posed, the expenditure by the party would not be independent. "Party committees are considered incapable in making 'independent' expenditures in connection with the campaigns of their party's candidates." Federal Election Comm. v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 29 n. 1 (1981).

KRS 121.150(1) provides that all expenditures other than "independent expenditures" must take the form of contributions to the campaign treasurer. Accordingly, expenditures by a political party directed to defeat, or diminish the support for, the slate of another party would contravene this provision, as well as count toward the \$1.8 million cap.

In its Advisory Opinion 95-006 and proposed administrative regulation, the Registry dealt with generic party activity relating to the party's entire ticket which might incidentally include reference to the party's candidates for Governor and Lieutenant Governor. While such generic party activity might indirectly "support" the party's slate, the Registry concluded such expenditures are not "contributions," and are not expenditure for purposes for calculating the \$1.8 million cap, so long as the communications include all that party's candidates for statewide office and do not display the name or likeness of either (or both) the candidate(s) for Governor and Lieutenant Governor in a manner which places greater emphasis on that candidate or slate than on the other candidates for statewide office on the party's ticket. However, party expenditures to defeat, or diminish support for, the opposing slate are contributions and expenditures within the meaning of the applicable statutes.

Sincerely,

Rosemary F. Center
General Counsel

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